JURY TASK FORCE SOURCE LISTS AND RESPONSE RATES WORK GROUP

August 20, 2021

RECOMMENDATIONS FOR CONSIDERATION BY TASK FORCE

1. Recommend that all courts move from 2-step to 1-step summons process.

The 2-step summoning process first qualifies prospective jurors (through a separate qualification questionnaire, which determines whether the prospective jurors meet statutory requirements for jury service), then at a later date involve issuance of summons to those who are qualified to report for jury service. The 1-step summonsing process combines the qualification and summonsing steps into one. A 2-step process does not reduce the number of people reporting to court and each additional mailing increases the risk of losing people along the way. Neither process considers hardship.

The recommendation includes:

- All courts move from 2-step to 1-step summons process,
- The transition be supported by experts from the National Center for State Courts, and
- Courts be allowed to designate the timeline for conversion that is commensurate with the jury and trial management practices of the court.

RESOURCE: Attached is a link to an article by Paula Hannaford-Agor and Nicole Waters provided to both the workgrup and the Jury Manager User Group (which includes the rural clerks of court) based on their analyses from the State-of-the-States Survey of Jury Improvement Efforts: https://ncsc.contentdm.oclc.org/digital/collection/juries/id/244/. The analyses showed that 2-step courts are both less efficient and more expensive, and because the additional decrease in jury yield tends to come from supplemental disqualification, undeliverable, and FTA rates for jurors who were previously deemed qualified, the resulting jury pools tend to disproportionately reduce representation for people of lower socioeconomic status, especially people of color. In addition, please see the document on changing from 2-step to 1-step posted to the meeting information page.

2. Recommend that three (3) categories of juror data be collected to optimize jury operations as well as ensure that all court are engaged in practices that facilitate meeting the constitutional obligation to provide a representative jury as well as being respectful of citizens when issuing summonses. Jurors are compelled to jury service and efforts to improve jury service through the gathering and analyzing of data should be viewed in that light.

Juror Demographic Information

Information about jurors' gender ethnicity and race should be collected from all jurors who are issued a summons, and at the very least from all jurors who report for service. Collecting this data from all jurors who are issued a summons will provide an idea of the representativeness of the master jury list and/or jury pool, and collecting this data from all jurors who report for service will demonstrate the representativeness the pool of reporting jurors and of venire panels.

Collecting this information allows courts to meet our obligations to provide a representative jury pool as required under *Duren v. Missouri*, 439 U.S. 357 (1979), and to comply with Arizona Code of Judicial Administration Section 5-203, and Arizona Supreme Court Administrative Order 2021-54.

This information should be collected regularly and compared to each community's population demographics, according to the U.S. Census. Courts wishing to analyze this information further should also perform absolute and comparative calculations to identify areas of disparity, and to what extent, if any, such disparities are present.

Juror Response Information

A juror response is any response received from a juror regarding their juror summons, whether that response is in the affirmative or to request an excuse, disqualification, or postponement. A response should not be confused with reporting, which is the appearance of a juror on a specified date of service. Collecting and tracking this information will enable courts to determine a summonsing rate that is appropriate to provide a sufficient number of prospective jurors to a division while causing the least amount of disruption to the citizens of the community.

Courts should collect data on:

- the number of summonses returned as undeliverable
- the number of prospective jurors disqualified from service
- the number of jurors who qualified to be excused from service (both permanently and for that summons period only)
- the number of jurors who request to be postponed
- the number of jurors who fail to respond and further fail to appear to their summons as ordered

These numbers, combined and tracked over time, will give courts an idea as to the number of prospective jurors who, when issued summonses, will not be available for service. If, for example, a court tracks these numbers and establishes that on average 50% of summonsed

jurors will not be available for service, that court can then use that figure to issue an appropriate number of summonses to achieve the desired yield for the day. Establishing these figures should allow a court to reliably meet the needs of a trial division and inconvenience as few members of the community as possible.

Juror Exit Surveys

Gathering information from jurors, post service, regarding their experience as a prospective or empaneled juror is an important step for courts to take. Gathering this data will allow courts to identify areas for improvement, which will help increase confidence in the judiciary and promote positive perceptions of jury service. It is important that any questions posed in such an exit survey be easily measurable and designed to elicit information that is actionable, and that courts work to resolve issues consistently identified by jurors.

Efforts should be made to gather this information from all jurors who report for service, regardless of whether the juror is seated on a trial. Survey software and the gathering of juror contact information during the summons response stage should make gathering this data much easier on courts. Administering these surveys in an electronic format also offers the benefits of ease and speed to collect and analyze responses, especially in our current, highly virtual environment.

Additional Data: Juror Utilization

Courts can further optimize operations by gathering data on the utilization of jurors by collecting the following information about reporting jurors:

Jurors who are —

- 1. Never Assigned (not assigned to panel or sent to court room remained in jury assembly room or failed to appear after check in)
- 2. Utilized in Incomplete Jury Selection (assigned to a jury panel and sent to court room but jury not sworn)
- 3. Challenged or Removed in Completed Jury Selection (number excused by peremptory challenge, challenge for cause, hardship when a jury was sworn)
- 4. Not Selected, Challenged or Removed in Completed Jury Selection (number assigned but not questioned or needed to impanel a jury when a jury was sworn)
- 5. Selected in Completed Jury Selection (Number selected as juror or alternate)

By collecting and evaluating this information over a period of time, courts can determine whether a high number of jurors are routinely needlessly reporting to the court on the day of service and adjusting summonsing and reporting instructions accordingly. While it is important to acknowledge that things happen outside of the control of the court and jurors may be brought in only to have a trial go away at the last minute, it is equally important to respect the imposition of jury service on citizens' lives and make efforts to only bring in only the number of jurors that will be needed. Frequently having high numbers of Never Assigned or Not Selected, Challenged or Removed jurors may indicate that the court is instructing too many jurors to

appear for service. According to the NCSC, "poor utilization of jurors' time also imposes an indirect cost on public trust and confidence in the courts"

3. Recommend a checklist of best practices for collection and utilization of data on juror biographical information, specifically gender, ethnicity, and race.

Defendants in criminal cases are entitled, under the Sixth Amendment to the United States Constitution, to a jury pool which represents a fair cross-section of the community. This means that the different identifiable classes of citizens in your community must be represented on jury panels. Specifically, jury panels must reasonably represent your community's gender, racial and ethnic composition. It is the responsibility of each court to collect and retain the demographic data from those called for jury duty.

Check List

- Regardless of whether a court utilizes a one or two step jury system, the initial notice should request the following information, as required by Supreme Court AO 2021-54 and Arizona Code of Judicial Administration § 5-203:
 - Gender
 - Male
 - Female
 - Ethnicity self identified (use list from federal census or as ordered by Administrative Order or ACJA sections)
 - Race self identified (use list from federal census or as ordered by Administrative Order or ACJA sections)
- If feasible, allow individuals to provide information online
- Collect information from all individuals including those who claim they are exempt from jury duty, those who are excused or disqualified, and those who request a postponement of service. Provide a due date for the response and send a follow-up notice
- Provide jurors an opportunity to report this information on the day of service as well
- Store information in a format which can easily access specific data (e.g., data regarding percentage of females in jury panel)
- Create reporting structures and regularly gather data to compare and evaluate the
 composition of the specific court's jury pool and reporting jurors. Many courts utilize jury
 management software; consult with IT professional, and the jury management software
 company if appropriate, to discuss ways to extract such data or develop automated
 reports.

JURY TASK FORCE

BARRIES TO SERVICE WORK GROUP

August 20, 2021

1. Recommend that A.R.S. § 21-221 (the daily juror stipend statute) be amended to add further compensation representing the fair market value of dependent care.

The Workgroup recommends capping the stipend to one child in recognition of the infeasibility/impracticality of providing more (both from a funding standpoint and a seeking of consensus standpoint), given that we're proposing an 8x+ increase from \$12 for a juror with child to \$98+/day.

The Workgroup recommends capping the stipend at the same amount as the proposed daily limit for jurors. In other words the Workgroup is proposing \$49 for one or more children as a child care cap, so that -- when aggregated with the daily proposed stipend for jurors, which we understand as a separate matter to be \$49 -- the total is \$98. This represents a daily payment for the juror's service of \$49 plus the child care at \$49 more, which is the 8x increase from the current \$12/day.

2. Recommend that the lengthy trial fund statute be amended to cover this depended care stipend for all days of service when the juror qualifies for and seeks reimbursement under the Lengthy Trial Fund.

This offsets some of this additional cost that the counties would bear by adding the new stipend the stipend means the courts – meaning budgets of the county or city - would need a new budget line item to cover this new category of juror pay.

In drafting this recommendation some members of the work group looked at DES Market Survey.

The workgroup developed the recommendations to overlay with and work within the already approved Juror Pay Workgroup recommendations.

Members of the Workgroup note that the closets similar stipend is the Minnesota \$50 stipend for professional care and \$40 for in-home care

DRAFT STATUTORY AMENDED LANGUAGE INCORPORATING THE JUROR PAY AND BARRIERS TO SERVICE WORK GROUP RECOMMENDATIONS

<u>ALL CAPS UNDERLINE</u> = Juror Pay WG recommendations, approved

ALL CAPS BLUE UNDERLINE = Recommendation of Barriers to Service WG

21-221. Fees and mileage

A. Each juror shall be paid by the county:

- 1. For each day's attendance upon the superior court or justice court, twelve dollars AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR.
- 2. For each mile necessarily traveled from his residence to the court and back to his residence, an amount equal to the amount paid to state officers and employees pursuant to section 38-623, subsection A. Reimbursement shall be at the computed mileage rate regardless of whether the travel is accomplished by private, rented or chartered motor vehicle. When a juror necessarily returns to his residence and travels back to court during the period of service because of a recess ordered by the court, he shall be paid on the same basis for such travel.
- 3. FOR CARE OF ONE OR MORE CHILDREN OR DEPENDENTS SUBJECT TO THE JUROR'S CARE, IF NECESSARY FOR THE JUROR'S PARTICIPATION IN THE JURY, AN ADDITIONAL STIPEND FOR EACH DAY OF ATTENDANCE IN AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR.
- B. Attendance on the court shall include the first day a juror is required to attend and shall continue each day of actual attendance on the court thereafter, until the juror is either temporarily or permanently excused from jury service. Any juror who is excused from further attendance upon the first day of this appearance in obedience to a summons shall receive a mileage allowance only.

21-222. Arizona lengthy trial fund

(Rpld 7/1/27)

A. The Arizona lengthy trial and digital evidence fund is established consisting of monies received from the additional fees paid on all filings, appearances, responses and answers pursuant to section 12-115. The monies in the fund shall not be used for any purpose other than as prescribed in this section.

- B. The supreme court shall administer the fund and shall adopt rules for the administration of the fund. Not more than three percent of the monies in the fund shall be used for the reasonable and necessary costs of administering the fund. On or before the fifteenth day of each month, on receipt of a request for reimbursement the supreme court shall transmit monies from the fund to a jury commissioner for monies paid to a juror under this section, together with a fee of not less than the amount prescribed in section 12-284, subsection A, class E for each application for payment of replacement or supplemental earnings by a juror.
- C. Subject to the availability of monies, monies in the fund shall be used to
 - 1. Pay full or partial earnings replacement, or supplementation, AND DEPENDENT CARE STIPENDS PURSUANT TO § 21-221(A)(3) to jurors who serve as petit jurors for more than five days and who receive less than full compensation. The amount of replacement or supplemental earnings shall be at least \$40 AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR but not more than \$300 per day per juror beginning on the first day of jury service.
 - 2. If monies are available in the fund after paying jurors pursuant to paragraph 1 of this subsection, pay for the management and storage of digital evidence and to facilitate the display of the evidence t the jury and court at a trial and related proceedings.
- D. A juror whose jury service lasts more than five FOUR days may submit a request for payment from the fund. The amount a juror receives from the fund is limited to the difference between the jury fee prescribed in section 21-221(A)(1) and the actual amount of earnings a juror earns, not less than \$40 AN AMOUNT THAT IS EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR, up to the maximum level payable under subsection C, paragraph 1 of this section, minus any amount the juror actually received from the juror's employer during the same time period. A juror who requests payment from the fund:
 - 1. Shall disclose on the form the juror's regular earnings, the amount the juror's employer will pay during the term of jury service starting on the first day and thereafter, the amount of replacement or supplemental earnings being requested and any other information that the jury commissioner deems necessary.
 - Before receiving payment from the fund, shall submit verification from the juror's employer, if any, regarding the earnings information that is provided under paragraph 1 of this subsection. This verification may include the employee's most recent earnings statement or a similar document.

3. In order to verify the weekly income if the juror is self-employed or receives compensation other than wages, shall provide a sworn affidavit attesting to the juror's approximate gross weekly income, together with any other information that the supreme court requires.

E. Jurors who are unemployed and are not eligible for payment pursuant to subsections C, paragraph 1 and subsection D of this section are eligible to be paid \$40 <u>AN AMOUNT THAT IS</u> <u>EQUAL TO FOUR TIMES THE MINIMUM WAGE PRESCRIBED BY SECTION 23-363, SUBSECTIONS A AND B, ROUNDED UP TO THE NEAREST DOLLAR, even if they receive income in the form of spousal maintenance, pensions, retirement, unemployment compensation, disability benefits or other similar income. Commissioners shall not deduct these other forms of income in calculating the amount these jurors are to be paid from the fund.</u>

F. JURORS WHOSE SERVICE LASTS MORE THAN FOUR DAYS AND WHO ARE ELIGIBLE FOR THE DEPENDENT CARE STIPEND PURSUANT TO § 21-221(A)(3) SHALL BE PAID THE STIPEND FROM THE LENGTHY TRIAL FUND, RETROACTIVE TO DAY ONE OF SERVICE, SUBJECT TO THE AVAILABILITY OF THE MONIES.

JURY TASK FORCE JUROR PAY

SUMMARY OF ISSUES

After preparation of the legislative proposal related to the Juror Pay Work Group's recommendations which were approved by the task force at the July meeting, AOC staff recommends an amendment to A.R.S. § 21-222(D) and the formula for reimbursement of courts from the lengthy trial fund monies paid to jurors who sought and were paid the minimum amount under the lengthy trial fund.

This recommendation is related to the minimum amount a person who qualified for lengthy trial funds will receive. It does not impact any amounts sought by juror in excess of the minimum amount.

Changes to the lengthy trial fund minimum reimbursement amount and the separate daily juror stipend as adopted at the July meeting leave the local courts in a position of bearing all costs for jurors who serve on lengthy trial but only qualify for the minimum daily amount from the lengthy trial fund. Therefore, this recommendation is an attempt to correct that imbalance and equalize the formula in A.R.S. § 21-222(D) to reflect current percentages of cost borne by the court versus that reimbursed by the lengthy trial fund.

Jurors are paid by the court they appear before for any monies they qualify for under the lengthy trial fund. Courts then submit a request for reimbursement from the Administrative Office of Courts under A.R.S. § 21-222 and A.C.J.A. § 5-109. The current minimum amount a juror who qualified for lengthy trial fund monies will receive is \$40. Per A.R.S. § 21-222(D) the current formula for reimbursing courts is \$40 (minimum amount) - \$12 (statutory daily juror stipend) = \$28 to be reimbursed by the lengthy trial fund to the court.

AOC staff recommends that A.R.S. § 21-222(d) be amended to change that formula to be a percentage and not a set dollar amount. The formula would require that courts bear not the entire daily rate for this particular category of jurors, but rather bear 30% of the minimum amount (rounded up to the nearest whole dollar) and be reimbursed the remainder of the amount. By example: \$49 (4 times statutory minimum wage which is amount the LTF minimum was voted to be raised to by TF) - \$15 (representing 30% of the \$ statutory daily rate) = \$34 to be reimbursed to the court by the lengthy trial fund.

This proposed amendment also will prevent regular future amendments to account for the changing statutory minimum wage. Moreover, without this recommendation jurors who serve on qualifying trials would not have reason to complete the paperwork to seek lengthy trial funds because the daily juror stipend is the same as the lengthy trial fund minimum amount.